

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CURTIS P. FLEMING
Claimant

VS.

KEY CONSTRUCTION INC.
Respondent

AND

ST. PAUL FIRE & MARINE INS. CO.
Insurance Carrier

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Docket No. 244,404

ORDER

Respondent appealed Administrative Law Judge Jon L. Frobish's July 9, 1999, preliminary hearing Order.

ISSUES

In his July 9, 1999, preliminary hearing Order, Administrative Law Judge Frobish ordered all of claimant's outstanding medical paid as authorized medical and awarded claimant temporary total disability beginning April 23, 1999 through May 16, 1999. Respondent and the insurance carrier have appealed that Order arguing claimant had an intervening accident and therefore his current condition is not related to his original work-related accident of January 8, 1999.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board makes the following findings and conclusions:

Claimant, who has a history of low back pain, began working for respondent in June of 1996. On January 8, 1999, while setting up a portable heater for respondent, claimant slipped on ice and landed on some PVC pipe which was protruding from the ground. On the day of the accident, claimant experienced low back pain with some radiation down the right side. Two days later, claimant reported the pain had settled in his low back and down his left side.

Within the course of his authorized medical care, claimant was provided physical therapy. The therapist prescribed a course of exercises to be performed by claimant, two to three times each week, for the purpose of helping to relieve the pain and tenderness in his back and helping avoid further injury. Respondent placed claimant on light duty from the date of accident until January 26, 1999, and then claimant returned to regular duty until April 2, 1999.

Claimant testified that his mother passed away on April 4, 1999. Claimant left Wichita to drive to New York to bury his mother on Wednesday, April 7, 1999. Claimant arrived in New York on April 10, buried his mother on April 12, and left New York to drive back to Wichita on April 15. Claimant returned to Wichita on April 18.

After leaving New York for his return trip to Wichita, claimant drove approximately four hours before stopping at a Syracuse, New York, motel for the night. That next morning, April 16, claimant stated he felt tense so he laid down on the floor of his motel room and started performing the physical therapy exercises prescribed by his physical therapist, when he heard a loud pop in his hip. Thereafter, claimant experienced excruciating pain and could not straighten his leg out. Because of the pain, claimant could not drive and his wife had to drive the last two days of the trip. They arrived in Wichita on April 18, and claimant sought medical treatment at a local clinic that day. His condition did not improve, so he sought further medical treatment on April 23 at a local hospital's emergency room.

Respondent argues the injury claimant suffered on April 16, while performing physical therapy exercises prescribed by his physical therapist, cannot be the natural and probable consequence of claimant's January 8, 1999, work-related injury. Rather, respondent believes the injury is the result of an intervening act, that being claimant's driving 10-15 hours per day for three consecutive days to and from New York. Respondent further notes that although injuries arising out of medical treatment and prescribed physical therapy programs are generally compensable, claimant's injury should not be compensable because he was not participating in a formal treatment program at the time of the injury.

Under the Workers Compensation Act, securing medical treatment arises out of and in the course of claimant's employment with respondent and injuries occurring during ongoing medical treatment for work-related injuries are compensable. See *Taylor v. Centex Construction Co.*, 191 Kan. 130, 379 P.2d 217 (1963); *Robert v. Krupka*, 246 Kan. 433, 790 P.2d 422 (1990); *Helms v. Tollie Freightways, Inc.*, 20 Kan. App.2d 548, 889 P.2d 1151 (1995); *Zimmer v. Central Kansas Medical Center*, WCAB Docket No. 186,009 (April 1997); and *Frazier v. Mid-West Painting Inc.*, WCAB Docket No. 199,465 (August 1997).

Although respondent argues claimant's driving 10 -15 hours for three straight days was the cause of claimant's back pain and tenderness necessitating his performing the stretching exercises, the Appeals Board notes that claimant only drove four hours the day before he performed the stretching exercises, not 10-15 hours for three consecutive days

as respondent argues. Further, claimant arrived in New York on April 10 and did not leave until April 15; therefore, claimant had five days to rest his back from the initial drive to New York. Therefore, the Appeals Board finds claimant's driving to New York and back to Wichita did not constitute an intervening accident.

Respondent also argues that claimant was not engaged in any "formal" treatment programs during the time he was performing his stretching exercises in the motel room. The Appeals Board finds claimant was performing physical therapy exercises that were prescribed by his therapist, and the therapist had directed claimant to continue performing those exercises at the time of his April 16 injury. Additionally, respondent's independent medical examiner also believed claimant could continue to benefit from physical therapy. Therefore, the Appeals Board finds claimant's injury, incurred while performing exercises prescribed by a physical therapist as a result of his January 8, 1999, work-related injury, is compensable as a consequence of his January 8, 1999, work-related back injury.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Jon L. Frobish's July 9, 1999, preliminary hearing Order should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1999.

BOARD MEMBER

c: Steve Wilson, Wichita, Kansas
Vincent Burnett, Wichita, Kansas
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director